IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11011 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

THAKORBHAI DEVJIBHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11011 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR JOSHI A.G.P. for Respondents No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/01/2002

ORAL JUDGEMENT

1. The petitioner is detained under provisions of the Prevention of Black Marketing and Supplies of

Essential Commodities Act, 1980 ('P.B.M. Act' for short), by virtue of order passed by the District Magistrate, Surat, on November 3, 2001. The petitioner challenges the said order in this petition under Article 226 of the Constitution of India on various grounds stated in the petition.

2. The grounds of detention indicate that the detaining authority found that the detenu is involved in the activities detrimental to smooth supply of essential commodities like petroleum products. He was supplying chemicals solvent known as Naptha. The detaining authority was satisfied that he is required to be immediately prevented from pursuing his illegal activities and resorting to ordinary law may not be effective and, therefore, the order of detention was passed.

3. Learned advocate Mr.Prajapati, has pressed into service the only ground of non-supply of translated version of certain documents. Mr.Prajapati submitted that the detaining authority has supplied the detenu with translated version of most of the papers but translated version of some portion of the documents in English is not supplied. This has affected the right of detenu of making an effective representation and, therefore, the continued detention would be vitiated. He has drawn attention of this Court to the copy of the compilation supplied to the detenu. He submitted the translated version of Schedule III of the Motor Spirit & High Speed Diesel (Regularization of supply & distribution and Prevention of Malpractices) Order 1998 has not been supplied to the detenu.

3.1. Mr.Prajapati submitted that on this ground the petition may be allowed. Respondents Nos.1, 2, and 3 are represented by learned A.G.P. Mr. Joshi whereas respondent No.4 - Union of India is represented by Ms.Davawala. The respondents have filed their affidavits-in-reply.

4. There is substance in contention raised by Mr.Prajapati that if complete set of translated version of the documents relied upon by the detaining authority while passing the order is not supplied to the detenu in the language understood by the detenu it would adversely affect his right of making an effective representation envisaged under Article 22 (5) of the Constitution of India and would therefore vitiate the continued detention. It is clear from the compilation supplied to the detenu that the detaining authority took care of

supplying translated version of almost all the documents. However, as rightly pointed out, the authority has not supplied the Schedule III of the Motor Spirit and High Speed Diesel (Regularization of supply of distribution and Prevention of Malpractices) Order 1998. This aspect is not disputed by the respondents. The Apex Court in Powanammal v. State of Tamil Nadu, A.I.R. 1999 S.C. 618 have held that non-supply of documents relied upon by the detaining authority to reach the subjective satisfaction in language understood by the detenu would cause prejudice to the detenu. The continued detention therefore would be illegal. The said judgment would squarely be applicable to the facts of the present case.

For the foregoing reasons, the petition deserves to be allowed and the same is allowed. Order passed by District Magistrate, Surat dated 3.11.2001 is hereby quashed. The petitioner Thakorebhai Devjibhai Parmar be released from the detention forthwith if not required in any other case. Rule is made absolute. No costs. Direct Service is permitted.

(A.L. Dave, J.)

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